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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,710	04/16/2004	Robert W. Young	P-1089A	1773
7590	02/24/2005		EXAMINER	
Scott R. Cox 400 West Market St., Ste. 2200 Louisville, KY 40202			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	(Signature)
	10/826,710	YOUNG ET AL.	
	Examiner Gregory Pickett	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 December 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 April 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

1. This Office action acknowledges the applicant's Amendment submitted 23 December 2004.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1, 2, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davy (US 3,199,756) in view of Applicant's Admitted Prior Art (page 4, lines 8-14 & page 5, lines 14-16 of the instant application; hereinafter AAPA) and Fukumoto et al (US 5,961,025).

Claims 1, 2, 6, and 8 are product-by-process claims.

Regarding claims 1 and 2, Davy discloses continuous strips of packets holding bulk material. Davy lacks, or does not expressly disclose a splice arrangement.

AAPA discloses that it was known in the art at the time the invention was made to splice two ends of a continuous strip of packets together in the instances of problems during processing (see Instant application, page 4, lines 2-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to splice the ends of Davy together in the instance of damage to the strips during processing.

Davy-AAPA discloses the claimed invention except that AAPA uses adhesive tape instead of ultrasonic welding.

Fukumoto shows that ultrasonic welding was an equivalent splicing means known in the art at the time the invention was made. Therefore, because these two splicing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute ultrasonic welding for adhesive tape, in order to prevent incorrect tape application from gumming up equipment further down the line.

As to claims 6 and 8, the method of forming the device is not germane to the issue patentability of the device itself. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

4. Claims 1, 3, 4, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davy (US 3,199,756) in view of AAPA and Ward (US 6,342,118).

Claims 1, 3, 4, 7, and 9 are product-by-process claims.

Regarding claims 1 and 3, Davy discloses continuous strips of packets holding bulk material. Davy lacks, or does not expressly disclose a splice arrangement.

AAPA discloses that it was known in the art at the time the invention was made to splice two ends of a continuous strip of packets together in the instances of problems during processing (see Instant application, page 4, lines 2-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to splice the ends of Davy together in the instance of damage to the strips during processing.

Davy-AAPA discloses the claimed invention except that AAPA uses adhesive tape instead of heat sealing.

Ward shows that heat sealing was an equivalent splicing means known in the art at the time the invention was made. Therefore, because these two splicing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute heat sealing for adhesive tape, in order to prevent incorrect tape application from gumming up equipment further down the line.

As to claims 4, 7, and 9, the method of forming the device is not germane to the issue patentability of the device itself. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

5. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davy (US 3,199,756) in view of AAPA and Klingebiel (US 5,385,622).

Claims 1 and 5 are product-by-process claims.

Davy discloses continuous strips of packets holding bulk material. Davy lacks, or does not expressly disclose a splice arrangement.

AAPA discloses that it was known in the art at the time the invention was made to splice two ends of a continuous strip of packets together in the instances of problems during processing (see Instant application, page 4, lines 2-7). It would have been

obvious to one of ordinary skill in the art at the time the invention was made to splice the ends of Davy together in the instance of damage to the strips during processing.

Davy-AAPA discloses the claimed invention except that AAPA uses adhesive tape instead of simply adhesive.

Klingebiel shows that adhesive alone was an equivalent splicing means known in the art at the time the invention was made. Therefore, because these two splicing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the adhesive of Klingebiel for the adhesive tape of AAPA, in order to reduce the layers of material at the splice joint.

Response to Arguments

6. Applicant's arguments filed 23 December 2004 have been fully considered but they are not persuasive.

7. Applicant's arguments, see paragraph spanning pages 6 and 7, filed 23 December 2004, with respect to Cullen et al have been fully considered and are persuasive. The rejections of claims 1-9 with Cullen et al as the base reference have been withdrawn. However, there is nothing in Davy to suggest the cutting would be performed through the aperture. The aperture of Davy is used as a means for motion and would require strength for the joint. Therefore, one of ordinary skill in the art would

have found the overlapping features of Fukumoto et al, Ward, and Klingebiel an advantageous feature. The aperture of Cullen et al is used only as an optical locator.

8. The arguments of pages 3-10 are directed primarily to the process of making the product. "The Patent Office bears a lesser burden of proof in making out a case of *prima facie* obviousness for product-by-process claims because of their peculiar nature" than when a product is claimed in the conventional fashion. *In re Fessmann*, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983). In this case, the examiner has provided the rationale for the proposed combination. Applicant's admitted prior art provides the motivation to splice the continuous strips (page 4, lines 8-14); Fukumoto et al (Abstract), Ward (Figure 3), and Klingebiel (Col. 2, lines 51-67) disclose the overlap. Applicant addresses the structure of the product on pages 10 and 11 of the response, but has not provided any evidence that the claimed method produces a product that is structurally different from that rendered obvious by the prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gpp
Greg Pickett
Examiner
8 February 2005

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